

February 22, 2013

To: Executive Board

Subject: **Board Payroll Process**

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## Recommendation

Direct the Executive Director to:

1. Implement a process whereby Foothill Transit Governing Board Members including Governing Board Alternates are paid and reported to the IRS as employees of Foothill Transit; **OR**
2. Maintain the current payment process whereby Governing Board Members and alternates are paid as independent contractors. Executive Board Members and their alternates are currently paid as employees.

## Analysis

At the September 28, 2012 Executive Board meeting, the Board considered a change to the processing of stipends to Board Members for their participation at required meeting as workers of the agency. The Executive Board directed that a request be made for a clarification/determination from the IRS using Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholdings). Because of the differences between the method of selection of the Executive Board members and Alternates versus those of the remaining Governing Board members, on October 5, 2012 two forms were completed and sent to the IRS. The forms were subsequently received by the IRS on October 10, 2012. A reply was received stating the IRS was unable to process the Form SS-8 until after the conclusion of the tax year and payment documents, such as a 1099 had been issued. Their reply appeared to address the concerns of a worker and not those of the employer. While awaiting the reply from the IRS additional guidance was obtained from IRS Code Section 3401(C) which states: the term "employee" includes an officer, employee, or elected official of the United States, a state, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. This would appear to indicate the Executive Board members and their Alternates are employees by virtue of being elected and the remaining Governing Board members may not be employees because they were appointed, not elected.

At the December 14, 2012 Executive Board Meeting the Executive Director was directed to implement a payment process whereby Executive Board Members and their Alternates were to be paid and reported to the IRS as employees. This payment process was established and payments to the Executive Board Members and/or their Alternates for the month of December were processed and reported to the IRS as employees. Adjustments were processed to report these individuals as employees for 2012.



Recently a neighboring agency underwent an IRS review/audit to determine if their planning commissioners (reported as independent contractors and issued 1099s) were or were not employees of the agency. The position of the IRS appears to be that all workers are either an employee or an independent contractor and an independent contractor must carry on a trade or business either as an individual or as a member of a partnership. Using these criteria the remaining Governing Board Members would be considered employees of Foothill Transit.

### **Budget Impact**

In the event the Executive Board chooses to process and report payments to all Governing Board Members as employees the cost estimates to process payroll would increase from the amount required to process payroll for Executive Board Members and their Alternates only. The total annual costs to process all payments as payroll would be approximately \$4,300. This includes the required employer taxes: Social Security, 6.2%; Medicare, 1.45%; State Disability Insurance, 1%; and State Unemployment and Training, 3.5%; totaling 12.15%. (12.15% of the FY 11-12 payments (\$35,000) is \$4,252.50). These costs do not include the \$100 monthly processing fee or the cost of health insurance. Health insurance is required for all employers with fifty or more full-time employees.

The total number of possible Foothill Transit employees is 47. This includes a member and an Alternate from each of the 22 cities, plus the three L.A. County representatives. While it is unlikely all the members and their alternates would be paid in a year, the possibility exists in those cases where a city may change its delegate to the Foothill Transit Governing Board. In the event Foothill Transit has fifty or more full-time employees, Foothill Transit must provide health insurance. The actual cost to provide health insurance would depend on several factors, some under the control of Foothill Transit and others to be determined by the Affordable Health Care for Americans Act. A conservative estimate would be a monthly cost of \$1,000 per employee or \$600,000 for the year. Funding has not been included in the current fiscal year budget.

As previously stated the employer responsibility to provide health insurance applies to businesses with more than fifty full-time employees. The board could mitigate the imposition of this requirement by classifying Governing Board Members as part-time employees and/or reducing the total number of Governing Board members by eliminating the Governing Board Members alternates. Eliminating alternates would reduce the number of potential employees by approximately 50 percent. Another uncertainty of the health insurance requirement is whether if insurance has been



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provided and the total number of employee later decreases to fewer than 50 employees, whether the employer is still required to provide health insurance. If not, the process by which the employer discontinues this benefit previously bestowed on the employees will need to be investigated.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Hasenohrl".

Richard Hasenohrl  
Director of Finance

A handwritten signature in black ink, appearing to read "Doran J. Barnes".

Doran J. Barnes  
Executive Director